

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG This Document Relates to All Actions
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**JOINT SUBMISSION REGARDING
WATER PROVIDER BELLWETHER DISCOVERY POOL CASES**

Pursuant to this Court's Case Management Order No. 13, Co-lead counsel for Plaintiffs on behalf of the PEC, as well as Co-lead counsel for Defendants on behalf of the DCC, provide this submission regarding the selection of the Water Provider Bellwether Discovery Pool Cases for Tier One discovery.

Co-lead counsel for Plaintiffs and Defendants have agreed to the following ten cases:

<u>Case Name</u>	<u>CV Number</u>	<u>City/State</u>	<u>Plaintiff Counsel</u>
<i>Bakman Water Company v. 3M Company, et al.</i>	2:19-cv-02784-RMG	Fresno, CA	Baron & Budd P.C. & Cossich Sumich, Parsiola & Taylor, LLC
<i>City of Dayton v. 3M Company, et al.</i>	2:18-cv-03496-RMG	Dayton, OH	Napoli Shkolnik
<i>City of Sioux Falls v. 3M Company, et al.</i>	2:19-cv-1806-RMG	Sioux Falls, SD	Baron & Budd P.C. & Cossich Sumich, Parsiola & Taylor, LLC, Johnson, Janklow, Abdallah & Reiter
<i>City of Stuart, Florida v. 3M Company, et al.</i>	2:18-cv-03487-RMG	Stuart, FL	Morgan & Morgan, Weitz & Luxenberg
<i>Emerald Coast Utilities Authority v. 3M Company, et al.</i>	2:18-cv-03488-RMG	Pensacola, FL	Baron & Budd P.C. & Cossich Sumich, Parsiola & Taylor, LLC
<i>Hampton Bays Water District v. 3M Company, et al.</i>	2:18-cv-03339-RMG	Hampton Bays, NY	Napoli Shkolnik
<i>Town of Ayer v. 3M Company, et al.</i>	2:19-cv-03120-RMG	Ayer, MA	Baron & Budd, P.C.; Rodman, Rodman,

<u>Case Name</u>	<u>CV Number</u>	<u>City/State</u>	<u>Plaintiff Counsel</u>
			Sandman, P.C.; Cossich, Sumich, Parsiola & Taylor
<i>Town of Maysville v. 3M Company, et al.</i>	2:19-cv-3434-RMG	Maysville, NC	Baron & Budd, Cossich, Sumich, Parsiola & Taylor and Law Office of Harold Seagle
<i>Warminster Township Municipal Authority v. 3M Company, et al</i>	2:19-cv-2472-RMG	Warminster, PA	Saltz Mongeluzzi & Bendesky/Anapol Weiss
<i>Warrington Township v. 3M Company, et al.</i>	2:19-cv-2473-RMG	Warrington, PA	Saltz Mongeluzzi & Bendesky/Anapol Weiss

While CMO-13 indicated there were to be twelve cases, the parties agree on submitting ten Water Provider Bellwether Discovery Pool Cases. *See* CMO-13 ¶ B(2) (contemplating that 10 agreed cases may be appropriate rather than 12). The parties reserve their rights to meet-and-confer at a later time as to whether to propose two additional cases.

The information required under Paragraph B(1) of CMO-13 for each of these ten cases is set forth in the attached Appendix A.

Dated: February 26, 2021

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¹ The Complaint also names AGC, Inc. (f/k/a Asahi Glass Co., Ltd.) and Archroma Management LLC, but those defendants have not been properly served.

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Leach*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court’s inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants’ *Lexecon* waiver below is intended to be contingent upon other “rights, defenses, and/or objections that Defendants may have as to any claim or the

conduct of any trial,” Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.²

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff has claimed PFAS contamination from alleged AFFF use at the Fresno-Yosemite International Airport and/or the Air National Guard 144th Fighter Wing and Marine Corps Reserve Center located on a portion of the Fresno-Yosemite International Airport.

5) Proposed Complaint

Plaintiff filed its First Amended Complaint on September 24, 2020 (Dkt. 23).

6) Statements of Affirmative Defenses

Each Defendant properly served in this action has filed a General Denial and Statement of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250, 254, 268, 299, 300, 382, 399, 415, 461, 654, 689, 729, 785, 1209).³ Defendants intend to file

² See *In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for “good cause” which refers to instances of “fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.”) (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

³ Defendants Carrier Global Corporation and Raytheon Technologies Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873

individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Chemicals Incorporated
- Corteva, Inc.
- DuPont de Nemours, Inc.
- Dynax Corporation

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
 AGC Chemicals Americas, Inc.
 Amerex Corp.
 Arkema Inc.
 BASF Corporation
 Buckeye Fire Equipment Co.
 Carrier Global Corporation

that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

ChemDesign Products, Inc.
Chemguard, Inc.
The Chemours Co.
The Chemours Co., FC, LLC
Chubb Fire, Ltd.
Deepwater Chemicals, Inc.
E. I. duPont De Nemours & Co.
Kidde PLC, Inc.
Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *City of Dayton v. 3M Company, et al.*, No. 2:18-cv-03496-RMG1) Plaintiff's Counsel

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Learch*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial," Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.⁴

⁴ *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for "good cause" which refers to instances of "'fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.'") (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff has claimed PFAS contamination from alleged AFFF use at Wright-Patterson Air Force Base and City of Dayton Fire Training Center.

5) Proposed Complaint

Plaintiff filed its Third Amended Complaint on September 25, 2020 (Dkt. 69).

6) Statements of Affirmative Defenses

Each Defendant properly served in this action has filed a General Denial and Statement of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 248, 250, 254, 268, 299, 300, 382, 399, 415, 507, 654, 689, 729, 785, 1209).⁵ Defendants intend to file individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

⁵ Defendant Carrier Global Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Chemicals Incorporated
- Corteva, Inc.
- DuPont de Nemours, Inc.
- Dynax Corporation

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
 AGC Chemicals Americas, Inc.
 Amerex Corp.
 Arkema Inc.
 BASF Corporation
 Buckeye Fire Equipment Co.
 Carrier Global Corporation
 ChemDesign Products, Inc.
 Chemguard, Inc.
 The Chemours Co.
 The Chemours Co., FC, LLC
 Chubb Fire, Ltd.
 Deepwater Chemicals, Inc.
 E. I. duPont De Nemours & Co.
 Kidde PLC, Inc.

Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *City of Sioux Falls v. 3M Company, et al.*, No. 2:19-cv-1806-RMG1) Plaintiff's Counsel

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2) Served Defendants and Defense Counsel⁶

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⁶ The Complaint also names AGC, Inc. (f/k/a Asahi Glass Co., Ltd.) and Archroma Management LLC, but those defendants have not been properly served.

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UTC Fire & Security Americas Corporation, Inc.	Jonathan Handler John Cerreta Keith Bensten DAY PITNEY LLP One Federal Street Boston, MA 02110 T: (617) 345 4600 F: (617) 345 4745 jihandler@daypitney.com jcerreta@daypitney.com kbensten@daypitney.com
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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Learch*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court’s inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants’ *Lexecon* waiver below is intended to be contingent upon other “rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial,” Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.⁷

⁷ *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for “good cause” which refers to instances of “fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.”) (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff alleges that its groundwater supply wells have been contaminated with PFAS—including PFOA and PFOS—and their precursors, stemming from the use of AFFF. Compl. ¶¶ 3, 9. Plaintiff further alleges that this AFFF was used by Plaintiff's Fire Department at sites including the Sioux Falls Regional Airport–Joss Field (formerly the Sioux Falls Army Air Base) and at the Fire Department's facility at 1201 West Algonquin Street in Sioux Falls. *Id.* ¶ 9. This is the address of the Air National Guard Base which operates on property adjacent to the Sioux Falls Regional Airport—Joss Field on property owned by the Sioux Falls Regional Airport and at which the Air National Guard utilized AFFF.

5) Proposed Complaint

Plaintiff filed its Second Amended Complaint on September 24, 2020 (Dkt. 40).

6) Statements of Affirmative Defenses

Defendants that have been properly served have each filed General Denials and Statements of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250, 254, 268, 299, 300, 382, 399, 415, 461, 654, 689, 729, 785, 1209).⁸ Defendants intend to file

⁸ Defendants Carrier Global Corporation and Raytheon Technologies Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses

individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants that have been properly served anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Archroma U.S., Inc.
- Chemicals Incorporated
- Clariant Corporation
- Corteva, Inc.
- DuPont de Nemours, Inc.
- Dynax Corporation

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
AGC Chemicals Americas, Inc.
Amerex Corp.
Arkema Inc.

filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

BASF Corporation
Buckeye Fire Equipment Co.
Carrier Global Corporation
ChemDesign Products, Inc.
Chemguard, Inc.
The Chemours Co.
The Chemours Co., FC, LLC
Chubb Fire, Ltd.
Deepwater Chemicals, Inc.
E. I. duPont De Nemours & Co.
Kidde PLC, Inc.
Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *City of Stuart, Florida v. 3M Company, et al.*, No. 2:18-cv-03487-RMG1) Plaintiff's Counsel

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2) Served Defendants and Defense Counsel

Defendant	Counsel
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BASF Corporation	<p> Matthew A. Holian John R. Wellschlager DLA PIPER 33 Arch Street, 26th Floor Boston, Massachusetts 02110-1447 (617) 406-6009 Telephone (617) 406-6109 Fax matt.holian@dlapiper.com john.wellschlager@dlapiper.com </p>

<p>Buckeye Fire Equipment Company</p>	<p>Michael L. Carpenter GRAY, LAYTON, KERSH, SOLOMON, FURR & SMITH, P.A. 516 South New Hope Road Post Office Box 2636 Gastonia, NC 28053 (704) 865-4400 (704) 866-8010 fax mcarpenter@gastonlegal.com</p> <p>Ellen Nunno, Corbo BURNS WHITE 457 Haddonfield Road Suite 510 Cherry Hill, NJ 08002 (609) 315-6933 (856) 382-6007 (Fax) encorbo@burnswwhite.com</p>
<p>Chemguard, Inc.</p>	<p>Joseph G. Petrosinelli Liam Montgomery Jessica L. Pahl J. Liat Rome WILLIAMS & CONNOLLY LLP 725 Twelfth Street, N.W. Washington, DC 20005 P: (202) 434-5000 F: (202) 434-5029 jpetrosinelli@wc.com lmontgomery@wc.com jpahl@wc.com lrome@wc.com</p> <p>David Dukes Amanda Kitts Wes Moran NELSON MULLINS RILEY & SCARBOROUGH LLP 1320 Main St. 17th Fl Columbia, SC 29201 (803) 799-2000 david.dukes@nelsonmullins.com amanda.kitts@nelsonmullins.com wes.moran@nelsonmullins.com</p>

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Clariant Corporation	<p>Robert H. Jordan Steven D. Weber Melanie Black Dubis Charles E. Raynal, IV PARKER POE ADAMS & BERNSTEIN LLP 200 Meeting Street, Suite 301 Charleston, SC 29401-3156 (843) 727-2670 Telephone (843) 727-2680 Fax robertjordan@parkerpoe.com steveweber@parkerpoe.com melaniedubis@parkerpoe.com charlesraynal@parkerpoe.com</p>
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DuPont de Nemours, Inc.	<p>John C. Moylan, III Alice W. Parham Casey Matthew T. Richardson Mary Lucille Dinkins WYCHE, P.A.</p>

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Dynax Corp.	<p>Addie K.S. Ries Kirk Warner Cliff Brinson SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP 150 Fayetteville Street, Ste. 2300 Raleigh, NC 27601 (919) 821-1220 aries@smithlaw.com kwarner@smithlaw.com cbrinson@smithlaw.com</p>
E.I. Du Pont De Nemours and Company	<p>David R. Erickson Brent Dwerlkotte Jennifer Hackman Maurissa J. Rushton SHOOK, HARDY & BACON LLP 2555 Grand Blvd. Kansas City, MO 64108 816.474.6550 derickson@shb.com dbdwerlkotte@shb.com jhackman@shb.com mrushton@shb.com</p>

	<p>John C. Moylan, III Alice W. Parham Casey Matthew T. Richardson Mary Lucille Dinkins WYCHE, P.A. 807 Gervais St., Suite 301 Columbia, SC 29201 (803) 254-6542 (803) 254-6544 (Fax) jmoylan@wyche.com tcasey@wyche.com mrichardson@wyche.com ldinkins@wyche.com</p> <p>Katherine L.I. Hacker John S. Phillips Katharine A Roin BARTLIT BECK LLP 1801 Wewatta St. 12th Floor Denver, Colorado 80202 (303) 592-3100 (303) 592-3140 (Fax) Kat.hacker@bartlitbeck.com john.phillips@bartlitbeck.com kate.roin@bartlitbeck.com</p>
Kidde-Fenwal Inc	<p>Jonathan Handler John Cerreta Keith Bensten DAY PITNEY LLP One Federal Street Boston, MA 02110 T: (617) 345 4600 F: (617) 345 4745 jihandler@daypitney.com jcerreta@daypitney.com kbensten@daypitney.com</p>
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Tyco Fire Products L.P.	<p>Joseph G. Petrosinelli Liam Montgomery Jessica L. Pahl J. Liat Rome WILLIAMS & CONNOLLY LLP 725 Twelfth Street, N.W. Washington, DC 20005 P: (202) 434-5000 F: (202) 434-5029 jpetrosinelli@wc.com lmontgomery@wc.com jpahl@wc.com lrome@wc.com</p> <p>David Dukes Amanda Kitts Wes Moran NELSON MULLINS RILEY & SCARBOROUGH LLP 1320 Main St. 17th Fl Columbia, SC 29201 (803) 799-2000 david.dukes@nelsonmullins.com amanda.kitts@nelsonmullins.com wes.moran@nelsonmullins.com</p> <p>Stephen J. Krigbaum Michael David Sloan CARLTON FIELDS JORDEN BURT, P.A. 525 Okeechobee Blvd. Suite 1200 West Palm Beach, FL 33401 561-659-7070 561-659-7368 (fax) skrigbaum@carltonfields.com msloan@carltonfields.com</p>

3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Leach*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial," Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.⁹

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

⁹ *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for "good cause" which refers to instances of "'fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.'") (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff has claimed PFAS contamination of its groundwater supply wells from alleged AFFF use by City of Stuart Fire Rescue at the City of Stuart Public Safety Complex.

5) Proposed Complaint

Plaintiff filed its Second Amended Complaint on September 25, 2020 (Dkt. 54).

6) Statements of Affirmative Defenses

Each Defendant properly served in this action has filed a General Denial and Statement of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250, 254, 299, 300, 382, 415, 785). Defendants intend to file individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Clariant Corporation
- Corteva, Inc.
- DuPont de Nemours, Inc.
- Dynax Corporation

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the

PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
AGC Chemicals Americas, Inc.
Amerex Corp.

Arkema Inc.
BASF Corporation
Buckeye Fire Equipment Co.
Carrier Global Corporation
ChemDesign Products, Inc.
Chemguard, Inc.
The Chemours Co.
The Chemours Co., FC, LLC
Chubb Fire, Ltd.
Deepwater Chemicals, Inc.
E. I. duPont De Nemours & Co.
Kidde PLC, Inc.
Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *Emerald Coast Utilities Authority v. 3M Company, et al.*, No. 2:18-cv-03488-RMG1) Plaintiff's Counsel

Plaintiff	Counsel
Emerald Coast Utilities Authority	<p> Scott Summy Cary McDougal Carla Burke Pickrel M. Cristina Sanchez BARON & BUDD, P.C. 3102 Oak Lawn Avenue Suite 1100 Dallas, TX 75219 (214) 521-3605 (214) 520-1181 (fax) ssummy@baronbudd.com cmcdougal@baronbudd.com cburkepickrel@baronbudd.com csanchez@baronbudd.com </p> <p> Philip F. Cossich Darren D. Sumich David A. Parsiola Brandon J. Taylor Christina Cossich Andrew J. Cvitanovic Luana N. Smith COSSICH SUMICH PARSIOLA and TAYLOR LLC 8397 Highway 232 Suite 100 Belle Chasse, LA 70037 (504) 394-9000 (504) 394-9110 fax pcossich@coffichlaw.com dsumich@coffichlaw.com dparsiola@coffichlaw.com btaylor@coffichlaw.com ccossich@coffichlaw.com AndrewCvitanovic@coffichlaw.com lnaylor@coffichlaw.com </p> <p> Robert Beasley LITVAK BEASLEY WILSON & BALL, LLP 40 Palafox Place, Suite 300 </p>

	Pensacola, FL 32502 Telephone: (850) 432-9818
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2) Served Defendants and Defense Counsel¹⁰

Defendant	Counsel
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¹⁰ The Complaint also names AGC, Inc. (f/k/a Asahi Glass Co., Ltd.) and Archroma Management LLC, but those defendants have not been properly served.

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Buckeye Fire Equipment Co.	<p>Michael L. Carpenter GRAY, LAYTON, KERSH, SOLOMON, FURR & SMITH, P.A. 516 South New Hope Road Post Office Box 2636 Gastonia, NC 28053 (704) 865-4400 (704) 866-8010 fax mcarpenter@gastonlegal.com</p>

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Leach*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial," Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.¹¹

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

¹¹ *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for "good cause" which refers to instances of "'fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.'") (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff alleges that certain of its groundwater supply wells are contaminated with PFOA and PFOS. Compl. ¶ 3. Plaintiff further alleges that this PFOA and PFOS stems at least in part from the use of AFFF at Pensacola International Airport (formerly Pensacola Gulf Coast Regional Airport and Pensacola Regional Airport (Hagler Field)) and Bronson Field (a former Naval Auxiliary Air Station), *id.* ¶¶ 5–6, and possibly from the use of AFFF at nearby fire stations, Saufley Field, landfills, and “Former Military Base[s]” and “Former Military Airfield[s],” Response to Question 12, Plaintiff ECUA’s Plaintiff Fact Sheet (submitted on November 12, 2019).

5) Proposed Complaint

Plaintiff filed its Second Amended Complaint on September 25, 2020 (Dkt. 68).

6) Statements of Affirmative Defenses

Defendants that have been properly served have each filed General Denials and Statements of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250, 254, 268, 299, 300, 382, 399, 415, 461, 654, 689, 729, 785, 1209).¹² Defendants intend to file individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

¹² Defendant Raytheon Technologies Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

- Archroma U.S., Inc.
- Chemicals Incorporated
- Clariant Corporation
- Corteva, Inc.
- DuPont de Nemours, Inc.
- Dynax Corporation

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
 AGC Chemicals Americas, Inc.
 Amerex Corp.
 Arkema Inc.
 BASF Corporation
 Buckeye Fire Equipment Co.
 Carrier Global Corporation
 ChemDesign Products, Inc.
 Chemguard, Inc.
 The Chemours Co.
 The Chemours Co., FC, LLC
 Chubb Fire, Ltd.
 Deepwater Chemicals, Inc.
 E. I. duPont De Nemours & Co.
 Kidde PLC, Inc.
 Kidde-Fenwal, Inc.
 Nation Ford Chemical Co.

National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *Hampton Bays Water District v. The 3M Company, et al.*, No. 2:18-cv-03339-RMG1) Plaintiff's Counsel

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Learch*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the

conduct of any trial,” Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.¹³

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff has not yet identified a specific source of PFAS contamination from alleged AFFF use.

5) Proposed Complaint

Plaintiff filed its Third Amended Complaint on September 25, 2020 (Dkt. 96).

6) Statements of Affirmative Defenses

Each Defendant properly served in this action has filed a General Denial and Statement of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250, 254, 268, 299, 300, 382, 399, 415, 507, 654, 689, 729, 785, 1209).¹⁴ Defendants intend to file

¹³ See *In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for “good cause” which refers to instances of “fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.”) (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

¹⁴ Defendant Carrier Global Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc.,

individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Chemicals Incorporated
- Corteva, Inc.
- DuPont de Nemours, Inc.

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
 AGC Chemicals Americas, Inc.
 Amerex Corp.
 Arkema Inc.
 BASF Corporation
 Buckeye Fire Equipment Co.
 Carrier Global Corporation
 ChemDesign Products, Inc.
 Chemguard, Inc.

Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

The Chemours Co.
The Chemours Co., FC, LLC
Chubb Fire, Ltd.
Deepwater Chemicals, Inc.
E. I. duPont De Nemours & Co.
Kidde PLC, Inc.
Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *Town of Ayer v. 3M Company, et al.*, No. 2:19-cv-03120-RMG1) Plaintiff's Counsel

Plaintiff	Counsel
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--	--

2) Served Defendants and Defense Counsel¹⁵

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¹⁵ The Complaint also names AGC, Inc. (f/k/a Asahi Glass Co., Ltd.), Archroma Management LLC, Angus Fire Armour Corporation, and Ansul Company, but those defendants no longer exist in the named corporate form and/or have not been properly served.

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Deepwater Chemicals Incorporated	<p>Kurt D. Weaver WOMBLE BOND DICKINSON (US) LLP 555 Fayetteville Street Suite 1100 Raleigh, NC 27601 T: (919) 755-8163 M: (919) 819-4037</p>

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Kidde-Fenwal Inc	<p> Jonathan Handler John Cerreta Keith Bensten DAY PITNEY LLP </p>

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Tyco Fire Products L.P.	Joseph G. Petrosinelli Liam Montgomery Jessica L. Pahl J. Liat Rome WILLIAMS & CONNOLLY LLP

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Learch*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC,

submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial," Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.¹⁶

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff has claimed PFAS contamination from alleged AFFF use at Fort Devens.

5) Proposed Complaint

Plaintiff filed its First Amended Complaint on September 24, 2020 (Dkt. 11).

6) Statements of Affirmative Defenses

Each Defendant properly served in this action has filed a General Denial and Statement of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250,

¹⁶ *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for "good cause" which refers to instances of "'fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.'") (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

254, 268, 299, 300, 382, 399, 415, 461, 654, 689, 729, 785, 1209).¹⁷ Defendants intend to file individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Archroma U.S., Inc.
- Chemicals Incorporated
- Corteva, Inc.
- DuPont de Nemours, Inc.
- Dynax Corporation

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company

¹⁷ Defendants Carrier Global Corporation and Raytheon Technologies Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

AGC Chemicals Americas, Inc.
Amerex Corp.
Arkema Inc.
BASF Corporation
Buckeye Fire Equipment Co.
Carrier Global Corporation
ChemDesign Products, Inc.
Chemguard, Inc.
The Chemours Co.
The Chemours Co., FC, LLC
Chubb Fire, Ltd.
Deepwater Chemicals, Inc.
E. I. duPont De Nemours & Co.
Kidde PLC, Inc.
Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *Town of Maysville v. 3M Company, et al.*, No. 2:19-cv-3434-RMG1) Plaintiff's Counsel

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2) Served Defendants and Defense Counsel¹⁸

Defendant	Counsel
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¹⁸ The Complaint also names AGC, Inc. (f/k/a Asahi Glass Co., Ltd.), Archroma Management LLC, Angus Fire Armour Corporation, and Ansul Company, but those defendants no longer exist in the named corporate form and/or have not been properly served.

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Learch*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial," Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.¹⁹

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This

¹⁹ *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for "good cause" which refers to instances of "'fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.'") (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff alleges that the use of PFAS-containing products, including aqueous film-forming foam (“AFFF”), a firefighting agent used to control and extinguish Class B fuel fires, Teflon, Scotchguard, waterproofing compounds, stain-proofing compounds, paper and cloth coatings, waxes, led to the detection of three discrete PFAS chemicals in its water supplies and wells. Compl. ¶¶ 3, 4, 11. Plaintiff further alleges that “any detectible level of PFAS in its soil, surface water, groundwater, well water, or elsewhere on its property requires investigation, remediation and monitoring.” *Id.* ¶ 59. Plaintiff does not allege a specific site or source of the alleged contamination in either its operative complaint or Plaintiff’s Response to Question 12 of the Plaintiff Fact Sheet (submitted on April 7, 2020).

5) Proposed Complaint

Plaintiff filed its First Amended Complaint on September 24, 2020 (Dkt. 15).

6) Statements of Affirmative Defenses

Defendants that have been properly served have each filed General Denials and Statements of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250, 254, 268, 299, 300, 382, 399, 415, 461, 654, 689, 729, 785, 1209).²⁰ Defendants intend to file individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

²⁰ Defendants Carrier Global Corporation and Raytheon Technologies Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Chemicals Incorporated
- Corteva, Inc.
- DuPont de Nemours, Inc.

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
 AGC Chemicals Americas, Inc.
 Amerex Corp.
 Arkema Inc.
 BASF Corporation
 Buckeye Fire Equipment Co.
 Carrier Global Corporation
 ChemDesign Products, Inc.
 Chemguard, Inc.
 The Chemours Co.
 The Chemours Co., FC, LLC
 Chubb Fire, Ltd.
 Deepwater Chemicals, Inc.
 E. I. duPont De Nemours & Co.
 Kidde PLC, Inc.
 Kidde-Fenwal, Inc.
 Nation Ford Chemical Co.

National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *Warminster Township Municipal Authority v. 3M Company, et al.*, No. 2:19-cv-2472-RMG

1) Plaintiff's Counsel

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2) Served Defendants and Defense Counsel

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Leach*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the

conduct of any trial,” Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.²¹

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff alleges that its public water system has been contaminated by PFAS and/or their chemical precursors related to the use of AFFF. Compl. ¶ 2. Plaintiff further alleges that AFFF was used for decades at the former Willow Grove Naval Air Station Joint Reserve Base in Horsham Township, Pennsylvania, and at the former Naval Air Warfare Center in Warminster Township, Pennsylvania. *Id.* ¶ 7. Plaintiff further alleges generally in its Response to Question 12 in its Plaintiff Fact Sheet (submitted on December 27, 2019) that “[s]ources of the contamination in WMA’s water supply wells also include but are not limited to the manufacture, sale, use, and/or disposal of Defendants’ PFAS products, including at facilities in the vicinity of WMA’s wells.”

5) Proposed Complaint

Plaintiff filed its First Amended Complaint on September 24, 2020 (Dkt. 31).

²¹ See *In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for “good cause” which refers to instances of “fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.”) (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

6) Statements of Affirmative Defenses

Defendants that have been properly served have each filed General Denials and Statements of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150, 246, 248, 250, 254, 268, 299, 300, 415, 689, 729, 785, 1209).²² Defendants intend to file individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

7) Anticipated 12(b)(1) and/or 12(b)(2) Motions to Dismiss

The following Defendants anticipate filing motions to dismiss under Rules 12(b)(1) and/or 12(b)(2), pursuant to CMO-13:

- Chemicals Incorporated

With respect to the remaining Defendants that have been properly served in the above-captioned case, those Defendants and Plaintiff have joined the following agreement, which is applicable to each of the ten agreed Water Provider Bellwether Discovery Pool Cases submitted in this filing:

Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

3M Company
AGC Chemicals Americas, Inc.
Amerex Corp.

²² Defendants Carrier Global Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

Arkema Inc.
BASF Corporation
Buckeye Fire Equipment Co.
Carrier Global Corporation
ChemDesign Products, Inc.
Chemguard, Inc.
The Chemours Co.
The Chemours Co., FC, LLC
Chubb Fire, Ltd.
Deepwater Chemicals, Inc.
E. I. duPont De Nemours & Co.
Kidde PLC, Inc.
Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas
Corp., Inc.

The Agreeing Parties agree these Defendants are preserving and not waiving defenses under these two rules and that they may bring such motions at a later date. Defendants request that the Court memorialize the preservation of these defenses in an appropriate Order, including the fact that Plaintiffs may meet and confer with Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the defendant Agreeing Parties prior to or during Tier Two proceedings. In addition Agreeing Parties agree that if the Court grants a motion to dismiss on lack of jurisdiction grounds plaintiff may re-file its complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular defendant Agreeing Party was added to the Complaint, as applicable, will apply for purposes of timeliness.

Case: *Warrington Township v. 3M Company, et al.*, No. 2:19-cv-2473-RMG1) Plaintiff's Counsel

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2) Served Defendants and Defense Counsel

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Chemguard, Inc.	<p>Joseph G. Petrosinelli Liam Montgomery Jessica L. Pahl J. Liat Rome WILLIAMS & CONNOLLY LLP 725 Twelfth Street, N.W. Washington, DC 20005 P: (202) 434-5000 F: (202) 434-5029 jpetrosinelli@wc.com lmontgomery@wc.com jpahl@wc.com lrome@wc.com</p> <p>David Dukes Amanda Kitts Wes Moran NELSON MULLINS RILEY & SCARBOROUGH LLP 1320 Main St. 17th Fl Columbia, SC 29201 (803) 799-2000 david.dukes@nelsonmullins.com amanda.kitts@nelsonmullins.com wes.moran@nelsonmullins.com</p>

Chemicals Incorporated	<p>Oliver E. Twaddell John F. Parker GOLDBERG SEGALLA LLP 711 3rd Avenue, Suite 1900 New York, NY 10017 T: (646) 292-8751 otwaddell@goldbergsegalla.com jparker@goldbergsegalla.com</p>
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	scox@robinsonbradshaw.com R. Steven DeGeorge ROBINSON BRADSHAW 1900 Independence Center 101 N. Tryon Street Suite 1900 Charlotte, NC 28246 (704) 377-2536 sdegeorge@robinsonbradshaw.com
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	<p>Rock Hill, SC 29730 (803) 325-2900 scox@robinsonbradshaw.com</p> <p>R. Steven DeGeorge ROBINSON BRADSHAW 1900 Independence Center 101 N. Tryon Street Suite 1900 Charlotte, NC 28246 (704) 377-2536 sdegeorge@robinsonbradshaw.com</p>
Clariant Corporation	<p>Robert H. Jordan Steven D. Weber Melanie Black Dubis Charles E. Raynal, IV PARKER POE ADAMS & BERNSTEIN LLP 200 Meeting Street, Suite 301 Charleston, SC 29401-3156 (843) 727-2670 Telephone (843) 727-2680 Fax robertjordan@parkerpoe.com steveweber@parkerpoe.com melaniedubis@parkerpoe.com charlesraynal@parkerpoe.com</p>
Deepwater Chemicals Incorporated	<p>Kurt D. Weaver WOMBLE BOND DICKINSON (US) LLP 555 Fayetteville Street Suite 1100 Raleigh, NC 27601 T: (919) 755-8163 M: (919) 819-4037 Kurt.weaver@wbd-us.com</p>
Dynax Corp.	<p>Addie K.S. Ries Kirk Warner Cliff Brinson SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP 150 Fayetteville Street, Ste. 2300 Raleigh, NC 27601 (919) 821-1220</p>

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Kidde-Fenwal, Inc.	Jonathan Handler John Cerreta Keith Bensten

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Nation Ford Chemical Company	Ethan R. Ware Ruth Levy WILLIAMS MULLEN 1441 Main Street, Suite 1250 Columbia, SC 29201 T: (803) 567-4610 F: (803) 567-4601 eware@williamsmullen.com rlevy@williamsmullen.com
National Foam, Inc.	Keith E. Smith Jillian Kirn GREENBERG TRAURIG 1717 Arch Street Suite 400 Philadelphia, PA 19103 (215) 988-7800 T (215) 988-7843 D smithkei@gtlaw.com kirnj@gtlaw.com
Tyco Fire Products L.P.	Joseph G. Petrosinelli Liam Montgomery Jessica L. Pahl J. Liat Rome WILLIAMS & CONNOLLY LLP 725 Twelfth Street, N.W. Washington, DC 20005 P: (202) 434-5000 F: (202) 434-5029 jpetrosinelli@wc.com lmontgomery@wc.com jpahl@wc.com lrome@wc.com David Dukes Amanda Kitts

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3) Lexecon Rights

a) Plaintiff: In accordance with Section B.3 of CMO 13, Plaintiff in the above-captioned case agrees to waive its *Lexecon* rights under *Lexecon Inc. v. Milberg, Weiss, Bershad, Hynes & Leach*, 523 U.S. 26 (1998).

Plaintiff objects to the conditional *Lexecon* waivers provided by Defendants below. To the extent the Court determines that a multi-plaintiff trial format is appropriate, Plaintiff, and the PEC, submit that the *Lexecon* waiver should not be revocable on the basis of any such Court decision given a Court's inherent authority to consolidate trials. *See* Fed. R. Civ. 42(a).

Further, to the extent that Defendants' *Lexecon* waiver below is intended to be contingent upon other "rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial," Plaintiff likewise objects to such a contingent *Lexecon* waiver as *Lexecon* waivers cannot be withdrawn absent a showing of good cause.²³

b) Defendants: Each Defendant properly served in the above-captioned case (as listed above) agrees to waive its *Lexecon* rights. Consistent with Section B(4) of CMO 13, this waiver is specific

²³ *See In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, Civil Action No. 09-4414, 2015 U.S. Dist. LEXIS 117870, at *141 (D.N.J. Sep. 1, 2015) (holding that a *Lexecon* waiver can only be withdrawn for "good cause" which refers to instances of "'fraud, collusion, mistake or duress, or [where] the agreement is unconscionable or contrary to public policy.'" (citing *In re Fosamax Prods. Liab. Litig.*, No. 06 MD 1789 (JFK), 2011 U.S. Dist. LEXIS 49679, 2011 WL 1584584, at *2 (S.D.N.Y. 2011)).

only to the above-captioned, single-plaintiff case and does not apply to any other case in the MDL or in the event that the above-captioned case is consolidated with any other action for trial. This waiver is without prejudice to any other rights, defenses, and/or objections that Defendants may have as to any claim or the conduct of any trial.

4) Alleged AFFF Exposure and Site Location(s)

Plaintiff alleges that its public water system has been contaminated by PFAS and/or their chemical precursors related to the use of AFFF. Compl. ¶ 2. Plaintiff has alleged that AFFF was used for decades at the former Willow Grove Naval Air Station Joint Reserve Base in Horsham Township, Pennsylvania, and at the former Naval Air Warfare Center in Warminster Township, Pennsylvania. *Id.* ¶ 7. However, according to Plaintiff's Response to Question 12 in its Plaintiff Fact Sheet (submitted on December 26, 2019), "the Former Naval Air Warfare Center in Warminster, PA did not contribute to the contamination in Warrington's wells." Plaintiff further alleges generally in its Response to Question 12 in its Plaintiff Fact Sheet (submitted on December 26, 2019) that "[s]ources of the contamination in Warrington's water supply wells also include but are not limited to the manufacture, sale, use, and/or disposal of Defendants' PFAS products, including at facilities in the vicinity of Warrington's wells."

5) Proposed Complaint

Plaintiff filed its First Amended Complaint on September 24, 2020 (Dkt. 31).

6) Statements of Affirmative Defenses

Defendants that have been properly served have each filed General Denials and Statements of Affirmative Defenses in the Master Docket No. 2:18-mn-2873 (Dkts. 149, 150,

246, 248, 250, 254, 268, 299, 300, 415, 689, 729, 785, 1209).²⁴ Defendants intend to file individual Answers detailing their specific affirmative defenses according to the procedures set forth in CMO-13.

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Paragraph G of Case Management Order No. 13 permits defendants in Water Provider Bellwether Discovery Pool Cases to file motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(2) within 21 days of a case being selected for the Bellwether Discovery Pool. Plaintiffs in the Water Provider Bellwether Discovery Pool cases and the PEC along with the following Defendants (hereinafter collectively referred to as “the Agreeing Parties”) have agreed that the following Defendants will not file such motions at this time:

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²⁴ Defendant Carrier Global Corporation will file a General Denial and Statement of Affirmative Defenses on the Master Docket No. 2:18-mn-2873 that will be substantively identical to the General Denial and Statement of Affirmative Defenses filed by Defendants Kidde-Fenwal, Inc., Kidde PLC Inc., United Technologies Corporation, UTC Fire & Security Americas Corporation, and Chubb Fire, Ltd.

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